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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
(HONORABLE LONNY R. SUKO)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CR-12-072-LRS
)	Memorandum in Support of
vs.)	Defendant's Motion
)	to Suppress Evidence
KEVIN ELLISON,)	
)	
Defendant.)	Evidentiary Hearing Requested

TO: MICHAEL C. ORMSBY, UNITED STATES ATTORNEY
AINE AHMED, ASSISTANT UNITED STATES ATTORNEY

KEVIN ELLISON, through undersigned counsel, submits the following Memorandum in Support of his Motion to Suppress Evidence.

I. Background¹

On the morning of June 14, 2012, Mr. Ellison was in his apartment when a fire began in his bedroom. Mr. Ellison eventually was forced to jump from a third-story window. Paramedics arrived at the scene. They treated Mr. Ellison and transported him to Deaconess Medical Center.

¹The background is taken largely from the government's discovery and is in no way an admission by Mr. Ellison.

1 Once at the Medical Center, Mr. Ellison was taken to an exam
2 room. He was treated for smoke inhalation and burns. He was also
3 given two Hydrocodone pills at 7:30 a.m.

4 Shortly after taking the narcotic pain medication, Deputy Fire
5 Marshal Clifton Mehaffey arrived at the hospital and went into Mr.
6 Ellison's room.

7 Investigator Mehaffey began interviewing Mr. Ellison about the
8 fire, but did not initially read Mr. Ellison his rights. Mr. Ellison
9 responded to the investigator's questions for approximately 30 minutes.
10 During that time, Mr. Ellison made several incriminating statements.

11 The investigator then read Mr. Ellison his *Miranda* warnings and
12 repeated the questions he had asked prior to the giving *Miranda*
13 warnings. Mr. Ellison repeated his previously given *unMirandized*
14 statements.

15 At some point, Mr. Ellison received a call from a family member
16 and the investigator left the room to speak with others. When the
17 investigator returned, Mr. Ellison informed him that he wanted an
18 attorney and did not want to speak further. The investigator remained
19 in Mr. Ellison's room taking pictures and talking to others who were
20 visiting Mr. Ellison.

21 The hospital contacted Spokane County Mental Health requesting
22 an evaluation for Mr. Ellison. The Mental Health professional met with
23 Mr. Ellison and she advised that she believed he qualified for

1 detainment within a psychiatric facility. However, Mr. Ellison was
2 shortly thereafter arrested and taken into federal custody.

3 **II. Law and Argument**

4 Mr. Ellison's statements require suppression for two reasons:

- 5 1. His statements were taken in violation of *Miranda* and its progeny.
- 6 2. Given his emotional and physical state, his statements were not
7 voluntarily given.

8 Statements made in response to a custodial interrogation must be
9 suppressed unless the interrogating officers comply with the
10 requirements of *Miranda v. Arizona*, 384 U.S. 436 (1966). *See, Dickerson*
11 *v. United States*, 530 U.S. 428, 432 (2000). A defendant's waiver of
12 *Miranda* rights must be knowing, voluntary and intelligent. *United*
13 *States v. Garibay*, 143 F.3d 534, 537 (9th Cir. 1998). There is a
14 presumption against waiver of *Miranda*. *Id.*, at 537.

15 The validity of a waiver of *Miranda* must be determined in each
16 case through an examination of the facts and circumstances, including
17 the background, experience and conduct of the accused. *North Carolina*
18 *v. Butler*, 441 U.S. 369, 373 (1979). The Government bears a heavy
19 burden to demonstrate that the defendant waived his *Miranda* rights.
20 *Escobedo v. Illinois*, 378 U.S. 478, 490 n. 14 (1964).

21 Before the government can introduce incriminating statements in
22 its case-in-chief it must prove a voluntary, knowing and intelligent
23 waiver of the accused *Miranda* rights. *Miranda v. Arizona*, 384 U.S. 436

1 (1966). The court will not presume a waiver from a defendant's silence or
2 subsequent confession. *Miranda*, 384 U.S. at 475; *See North Carolina v.*
3 *Butler*, 441 U.S. 369, 373 (1979)(Courts must presume that a defendant
4 did not waive rights). In assessing the validity of a waiver, courts
5 analyze the totality of the circumstances surrounding the interrogation.
6 *Moran v. Burbine*, 475 U.S. 412, 421 (1986). Factors considered in this
7 analysis include the suspect's age, *Woods v. Clusen*, 794 F.2d 293 (7th
8 Cir.1986); familiarity with the criminal justice system, *United States v.*
9 *Cruz-Jimenez*, 749 F.2d 1 (1st Cir. 1990); and, explicitness of the waiver
10 *United States v. Binder*, 769 F.2d 595 (9th Cir. 1985).

11 To satisfy its burden of proving a valid waiver of Miranda, the
12 government must introduce sufficient evidence to establish that under
13 the totality of the circumstances, the defendant was aware of the nature
14 of the right being abandoned and the consequences of the decision to
15 abandon it. *Garibay*, 143 F.2d at 536, quoting *Moran v. Burbine*, 475
16 U.S. at 421. The government's burden to establish a valid waiver is a
17 heavy one and the court must indulge every reasonable inference against
18 waiver. *Garibay*, 143 F.2d at 536.

19 The government has a separate and distinct burden to prove the
20 voluntariness of any statement of the defendant. *Jackson v. Denno*, 378
21 U.S. 368 (1968); 18 U.S.C. § 3501. The trial court must determine the
22 voluntariness of any statement at a hearing out of the presence of the
23 jury. The determination of voluntariness involves a consideration of the

1 totality of facts and circumstances including the age, education, and
2 circumstances of the accused at the time the statement was given. The
3 factors include those set forth at 18 U.S.C. § 3501(b). Title 18 U.S.C. §
4 3501(b) states in pertinent part:

- 5 (1) the time elapsing between arrest and arraignment of the
6 defendant making the confession, if it was made after arrest
7 and before arraignment;
- 8 (2) whether such defendant knew the nature of the offence with
9 which he was charged or of which he was suspected at the
10 time of making the confession;
- 11 (3) whether or not such defendant was advised or knew that he
12 was not required to make any statement and that any such
13 statement could be used against him;
- 14 (4) whether or not such defendant had been advised prior to
15 questioning of his right to the assistance of counsel; and
- 16 (5) whether or not such defendant was without the assistance of
17 counsel when questioned and when giving such confession.

18 The presence or absence of any of the above mentioned factors to be
19 taken into consideration by the judge need not be conclusive on the
20 issue of voluntariness of the confession.

21 Moreover, the determination of voluntariness of a confession or
22 admission requires consideration of the physical condition of the accused
23 as well as the general mental status of the accused at the time the
24 statement is given. *See Crane v. Kentucky*, 476 U.S. 683, 688 (1986) and
Blackburn v. Alabama, 361 U.S. 199, 207-208(1960).

Mr. Ellison was under the influence of narcotics prescribed to him
by the hospital staff. Further, he had just suffered a traumatic event
and may well have been suffering from shock. Moreover, he was clearly
exhibiting signs of a mental health disorder because the hospital
contacted a mental health professional who recommended that Mr.

1 Ellison be involuntarily committed.

2 The government bears a heavy burden to show that Mr. Ellison
3 was properly advised of his Miranda rights; understood those rights,
4 knowingly and intelligently waived those rights and that any statements
5 were voluntarily given.

6 Under these circumstances, it does not appear the government can
7 meet its burden.

8 Dated: July 26, 2012
9

10 Respectfully Submitted,

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 26, 2012, I electronically filed the
3 foregoing with the Clerk of the Court using the CM/ECF System which
4 will send notification of such filing to the following: AINE AHMED,
5 Assistant United States Attorney.

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